IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.151 OF 2003

1. Special Land Acquisition Officer
(South Goa) Konkan Railway
Corporation Limited,
Amey Guest House,
Davorlim Road,
P.O. Navelim,
Salcete Goa, 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawnfond,
near Margao Railway Station,
Margao Goa. ... Appellants.

V/s

Umesh D. Nagarsenkar
Nagarcem,
Cancona, Goa. ... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. Amonkar, Advocate for the respondent.

CORAM: A.P. LAVANDE, J.

DATE: 8TH APRIL, 2005.

ORAL JUDGMENT

The appellants challenge the judgment and award dated 12.4.2002 passed by the Additional District Judge Margao in Land Acquisition No.89/95.

2. By Notification dated 4.7.1991 issued under Section 4 of the Land Acquisition Act (the Act for short) the Government acquired 2,60,262 square meters of land, situated at Chaudi in Canacona Taluka. The properties belonging to the respondent bearing survey no.99/2, 99/5 and 140 were part of the acquired land. The areas acquired were 1681 square meters in respect of survey no.99/5, 115 square meters in respect of survey no.99/2, 2606 square meters of survey no.140. Survey no.99/5 and 99/2 were garden lands whereas property bearing survey no.140 was paddy field. The Special Land Acquisition Officer by Award dated 22.12.1993 fixed compensation at the rate of Rs.18/- per square meter in respect of garden land and Rs.9/- per square meter in respect of paddy field.

3. Dissatisfied with the said award of Special Land Acquisition Officer, the respondent sought reference under Section 18 of the Act claiming compensation at the rate of Rs.100/- per square meter in respect of the acquired land. In Land Acquisition Case No.89/95 the respondent examined himself and produced three Sale Deeds, the details of which are

as follows.

1) Sale Deed dated 10.11.1988 (Exhibit AW1/A) of the plot of 500 square meter sold at the rate of Rs.100/- per square meter.

2) Sale Deed dated 11.12.1986 (Exhibit AW1/B) of a strip of land of 31 square meter sold at the rate of Rs.100/- per square meter.

3) Sale Deed dated 23.8.1990 (Exhibit AW1/C) of the plot of land of 160 square meters sold at the rate of Rs.120/- per square meter.

4. The respondent also examined Gopal Yeshwant Bale (AW2) who was the vendor in Sale Deed dated 11.12.1986 (Exhibit AW1/B) and Vilas Desai (AW3) who produced valuation report (Exhibit AW3/A).

5. The reference Court relying upon Award dated 15.3.1989 which was in respect of land acquired for the approach road to Talpona Gandhibagh Bridge, fixed the compensation in respect of the paddy field at the rate of Rs.24/- per square meter. In respect of the garden land the reference Court relied upon the two Sale Deeds Exhibit AW1/A and Exhibit AW1/B and fixed the compensation at the rate of Rs.100/- per square meter taking the average price of the said Sale Deeds. The reference Court rejected the valuation report of Vilas Desai (AW3) on the ground

that he had not visited the acquired land soon after the publication of notification of Section 4 of the Act and also did not rely upon his oral evidence.

6. Mr. Afonso, learned Counsel appearing for the appellants submitted that in so far as survey no.140 is concerned, although the respondent had not produced Award dated 15.3.1989 still the appellants do seriously challenge the approach of the reference Court in relying upon the said Award since the learned Counsel appearing for the appellants before the reference Court had submitted that he had no objection if reliance is placed on the said Award for fixing the compensation in respect of the property bearing survey no.140. However, Mr. Afonso submits that the reference Court ought not to have given increase of 10% every year in the absence of any evidence about development from 1986 onwards around the acquired area. The learned Counsel placed reliance on the judgment of this Court in First Appeal No.11/2000 and other connected appeals dated 30.3.2005 and submitted that this Court has already given increase of 5% every year in respect of paddy field and for the same reasons the respondent must be also given increase of 5% and not 10% every year as given by the reference Court. Mr.

Amonkar, learned Counsel appearing for the respondent has no objection if increase of 5% every year is given as given by this Court in other similar matters arising under the same notification. Accordingly, fixing the price of the acquired land bearing survey no.140 at Rs.15/- per square meter in the year 1986 and considering increase of 5% every year the compensation payable in respect of survey no.140 comes to Rs.18.75 per square meter. I deem it appropriate to round it to Rs.19/- per square meter. Accordingly the compensation payable in respect of survey no.140 as on the date of notification is fixed at Rs.19/- per square meter. Mr. Afonso further submitted that the approach of the reference Court in taking average price based on Exhibits AW1/A and AW1/B is clearly not permissible in view of the settled legal principal that average price mentioned in two Sale Deeds cannot be the basis for fixing the compensation. According to Mr. Afonso the reference Court was justified in not placing reliance on Sale Deed dated 23.8.1990 (Exhibit AW1/C). According to Mr. Afonso the reference Court was not justified in placing reliance on Sale Deeds dated 10.11.1988 (Exhibit AW1/A) and 11.12.1986 (Exhibit AW1/B) since the said Sale Deeds were in respect of paddy fields and therefore could not be compared

with the lands bearing survey no.99/2 and 99/5 which were admittedly garden lands. The learned Counsel further submitted that the respondent had not led any other evidence to substantiate his claim for compensation at the rate of Rs.100/- per square meter. The learned Counsel therefore submitted that the reference Court ought to have rejected the reference in so far as the garden lands were concerned.

7. Per contra, Mr. Amonkar, learned Counsel appearing for the respondent submitted that the lands bearing survey no.99/2 and 99/5 are situated at Chaudi, Canacona within the Municipal area and the same were situated in a residential area near the National Highway at a distance of about 10 meters and very close to the main bus stand. According to the learned Counsel in the absence of any statutory impediment, the said land had building potential and therefore the compensation fixed at the rate of Rs.100/- per square meter is just and proper.

8. I have considered the submissions made by the learned Counsel for the parties. As stated above, the compensation in respect of land bearing survey no.140 which is a paddy field is fixed at the rate of Rs.19/- per square meter as on the date of

the publication of notification under Section 4 of the Act. In so far as property bearing survey no.99/2 and 99/5, I am unable to accept the approach of the reference Court in relying upon Sale Deeds dated 10.11.1988 (Exhibit AW1/A) and 11.12.1986 (Exhibit AW1/B). The evidence on record clearly establishes that by the said two Deeds the lands sold were paddy field. That being the position, the reference Court was not justified in placing reliance on the said two Sale Deeds since admittedly the said lands acquired were garden lands and as such could not be compared to the lands which were subject matter of the two Sale Deeds. I am also unable to accept the approach of the reference Court in not relying upon Sale Deed dated 23.8.1990 (Exhibit AW1/C) on the ground that the same could not be compared on account of the existence of a house constructed on the said land. A bare look at the Sale Deed reveals that what was sold by the said Sale Deed is a plot of land admeasuring 160 square meter at the rate of Rs.112.50 per square meter. The Sale Deed does not reveal the existence of a house in the plot of land sold. Therefore the finding of the reference Court that no reliance can be placed on the said Sale Deed cannot be accepted. The plot of land sold by the said Sale Deed was a developed plot of 160 square meters and the acquired garden land is 1796 square

meters. There is no evidence led by the respondent that the acquired land which was a garden land was developed. Therefore reliance can be placed on Sale Deed dated 23.8.1990 (Exhibit AW1/C) and appropriate deductions will have to be made to fix the compensation in respect of the acquired garden lands. Since the plot sold by Sale Deed dated 23.8.1990 (Exhibit AW1/C) was a small plot of land and the acquired garden land is 1796 square meters deduction of 25% would be appropriate. Further if the respondent were to develop the acquired land, he would have to make substantial expenditure in developing the property and considering the location and the nature of the land, it would be appropriate to further deduct 50%. Therefore the total deductions come to 75%. Therefore the value of the acquired land on the basis of the Sale Deed dated 23.8.1990 (Exhibit AW1/C) after considering all permissible deductions comes to Rs.28.12 as on 23.8.1990. The notification under Section 4 of the Act was published almost one year after the execution of the Sale Deed and therefore it would be proper to increase the value by 10%. Therefore, the compensation payable in respect of the acquired lands bearing survey no.99/2 and 99/5 comes to Rs.30.80. I deem it appropriate to round it up to Rs.31/- and accordingly the

compensation payable in respect of garden lands is fixed at Rs.31/- per square meter. At this stage, Mr. Afonso pointed out that the Special Land Acquisition Officer has awarded Rs.8,100/- towards fruit value in respect of the trees existing in the acquired lands and Rs.5,688.97 towards wood value. According to the learned Counsel having regard to law laid down by the Apex Court, the respondent could not have been awarded both fruit value and wood value after fixing the compensation on the basis of building potential. Mr. Amonkar, learned Counsel appearing for the respondent has not disputed this legal position. Accordingly the amount of Rs.8,100/- awarded towards fruit value will have to be adjusted towards the total compensation payable in respect of the acquired lands.

9. In view of the above discussion, the compensation payable in respect of property bearing survey no.140 which was paddy field is fixed at Rs.19/- per square meter and in respect of properties bearing survey no.99/2 and 99/5 is fixed at Rs.31/- per square meter. The amount of Rs.8,100/- awarded by the Special Land Acquisition Officer towards fruit value will have to be adjusted against the total compensation payable to the respondent. Needless to mention that the respondent will be

entitled to all the statutory benefits under the Land Acquisition Act.

10. In the result, therefore, the appeal is partly allowed and the award passed by the reference Court is modified as indicated above. Having regard to the facts and circumstances of the case the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ef.